

THIRD DIVISION

[G.R. No. 192383, December 04, 2013]

**ISABELO C. DELA CRUZ, PETITIONER, VS. LUCILA C. DELA CRUZ,
RESPONDENT.**

DECISION

ABAD, J.:

This case deals with the right of a person to whom an immovable property has been unconditionally given to demand its partition.

The Facts and the Case

Petitioner Isabelo C. Dela Cruz (Isabelo) claimed that in 1975 he and his sisters, respondent Lucila C. Dela Cruz (Lucila) and Cornelia C. Dela Cruz (Cornelia), bought on installment a 240-square meter land in Las Piñas from Gatchalian Realty, Inc. Isabelo and Cornelia paid the down payment and religiously paid the monthly amortizations.^[1] On the following year, Isabelo constructed a residential house on the subject lot.^[2]

Because of Lucila's plea for the siblings to help their cousin, Corazon L. Victoriano (Corazon), who was in financial distress, Isabelo agreed to have the lot they bought used as collateral for the loan that Corazon planned to secure from the Philippine Veterans Bank. To make this possible, Lucila paid the P8,000.00 that they still owed Gatchalian Realty, Inc. On January 18, 1979 the Register of Deeds issued Transfer Certificate of Title (TCT) S-80735 in Lucila's name^[3] and this was mortgaged for Corazon's benefit.

But, since Corazon failed to pay her loan, the bank foreclosed on the property on March 1, 1989 for P286,000.00. Lucila redeemed it on March 27, 1992.^[4]

On October 7, 2002 Lucila executed an affidavit of waiver^[5] relinquishing all her share, interest, and participation to half of the lot to Isabelo and the other half to her niece, Emelinda C. Dela Cruz (Emelinda). On even date, Isabelo and Emelinda executed a *Kasunduan*^[6] acknowledging their respective rights in the property.

Claiming ownership of half of the subject property by virtue of Lucila's affidavit of waiver, on August 22, 2005 Isabelo filed an action for partition before the Regional Trial Court (RTC) of Las Piñas City in SCA 05-0008, seeking the segregation of his portion of the land and the issuance of the corresponding title in his name.

But Lucila countered that the property, including the house built on it, belonged to her since she paid for the same out of her income as pawnshop general manager and from selling jewelry.^[7] She claimed that her affidavit of waiver did not cede

ownership of half of the property to Isabelo since the affidavit made clear that her waiver would take effect only if the problems that beset their family were resolved. Since this condition had not been met, she had every right to revoke that waiver as in fact she did so on September 24, 2004 in the *Kasulatan ng Pagpawalang Bisa ng "Affidavit Waiver."*^[8]

On February 7, 2008 the RTC rendered a Decision^[9] denying Isabelo's complaint for lack of merit. It also ordered him to pay Lucila P50,000.00 as attorney's fees and to bear the costs of suit.^[10] The RTC ruled that Lucila's ownership was evidenced by the tax declaration, the real property tax payment order, and the title to the land in her name. Isabelo's testimony on cross-examination conclusively also showed that Lucila owned the property.^[11] Isabelo's contention that it was he and Cornelia who paid for the monthly amortization of the property cannot be believed since Cornelia herself testified that Lucila paid for all the amortizations on the land.^[12]

Further, the RTC held that Lucila's affidavit of waiver did not confer title over the property on Isabelo considering that, absent an annotation on TCT S-80735, the waiver cannot ripen into an adverse claim. More importantly, Lucila already cancelled the waiver through the *Kasulatan* that she subsequently executed.^[13] The RTC was also unconvinced that the house belonged to Isabelo. It noted that the receipts for the construction materials and survey plan that he presented did not prove ownership. Recovery of property, not partition was the proper remedy.

Isabelo appealed to the Court of Appeals (CA) in CA-G.R. CV 90797. On December 18, 2009 the latter court rendered a Decision^[14] affirming the RTC ruling that Isabelo failed to establish his right to half of the subject property as would entitle him to have the same partitioned. But the CA deleted the award of attorney's fees and costs for failure of Lucila to justify her claims and for the RTC's failure to state in its decision the rationale for the awards. Isabelo moved for reconsideration but the CA denied it.^[15]

Issue Presented

The sole issue presented in this case is whether or not the CA erred in failing to rule that Lucila's cession of half of the property to Isabelo through waiver did not have the effect of making him part owner of the property with a right to demand partition.

Ruling of the Court

In partition, the court must first determine the existence of co-ownership. The action will not lie if the plaintiff has no proprietary interest in the subject property. Indeed, the rules^[16] require him to set forth in his complaint the nature and extent of his title to the property. It would be premature to order partition until the question of ownership is first definitely resolved.^[17]

At bottom, the question is: did Lucila's affidavit of waiver ceding to Isabelo half of the subject property convey to him a right of ownership over that half? The CA agreed with the RTC that Lucila's affidavit of waiver did not vest any property right to Isabelo since the condition she set in that affidavit had not been fulfilled. This